



B A L B O A

TRAVEL MANAGEMENT

DEPT. OF TRANSPORTATION
DOCKETS

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September 22, 2000

Docket Management Facility
U.S. Department of Transportation
Room PL-401
400 Seventh Street SW
Washington, D.C. 20590-0001

OST-97-2881-166
OST-97-3014-35
OST-98-4775-80

Dear Friends:

RE: OST-97-2881, OST-97-3014, OST-98-4775

In response to the Department's study regarding rules governing airlines and computer reservations systems as well as the possible adoption of rules governing use of the Internet for airline distribution, I submit the following comments.

As a point of reference, I am the owner chief executive officer of a mid-sized regional travel agency based in California, and I have been in the agency business with the same company for 29 years.

1. Airline/CRS rules

- a. In times past, much was made of the "halo effect" which accrued to a (CRS owning) airline as a result of a travel agency having installed that carrier's CRS and having a "natural affinity" for booking passengers on the flights of the same airline. Given the long history of affiliation and *close working relationships* between CRS management and their erstwhile airline (owner) colleagues, it is easy to see that despite the split in ownership, the strong working relationships are still in place and functioning well. The Department has every reason to view the CRS's as an integral extension of the airlines as part of an integrated industry.
- b. We agree with the Amadeus petition asking the Department to prohibit the tying of a travel agency's access to an airline's corporate discount fares with the travel agency's choice of a specific CRS. We ourselves experienced loss of business in the past – in a competitive bid, we were told by the corporate account that we were their preferred agency but that they could not choose us because the discounts they enjoyed with their principal airline would not be available to them if the business were booked through our current CRS rather than the one indicated by the airline.
- c. In your memorandum alerting interested parties to the Department's proposed rulemaking, you state under Factual Background:

“Our rules currently require each system to allow all airlines to participate on non-discriminatory terms, to offer at least one unbiased display, and to make available to each airline participant any marketing and booking data from bookings for domestic travel that it chooses to generate from its system [emphasis mine].”

Certainly, any airline that a travel agency books and sells should have complete information regarding that agency’s activities with regard to the bookings and sales of its own products/services. However, I have never understood why the Department would tolerate, let alone codify, every airline’s right to have free access to all of the confidential booking and sales information of every travel agency. In fact, the opposite should be true: Other than the information regarding its own bookings and sales made through an agency, an airline should have no right to the broader booking and sales data of that agency unless the agency has specifically agreed to such access for a bona fide reason (and yes, I would include an override agreement as such a bona fide reason). Airlines should not have a “divine right” to all of an agency’s information simply because they have granted a normal appointment to the agency under ARC and/or IATAN. They should not be provided with the means to leverage and intimidate. And by the same token, I ask, how competitive is it for every airline to have complete access to all of the data for every other airline? Wouldn’t the market and the public be better served if each airline had to do it’s best to gather competitive data and make educated guesses – just like in other businesses?

I fully understand that the Department is interested in matters that relate to CRS/airline issues. While booking records/practices fall into this category, sales and payments do not – those relate to the ARC. Even though practices related to the ARC are not being dealt with at this time, I hope the Department undertakes a look at these practices at an appropriate time for the reasons stated above.

2. Regulation of Airline Distribution Practices Involving the Internet

While it is not the business of the Department to favor any method of distribution, your memorandum makes it clear that it is the business of the Department to promote wide access by the public to complete, accurate and fair information and to avoid consumer deception.

- a. Three important factors point clearly to why the Department should require every airline to make all fares that are available to the general public on an airlines’ own website also available to the general public via the CRS’s in which that carrier has chosen to participate:
 1. Despite the “computer revolution”, access to a computer and the ability to use one are far from universal. Many of the elderly, the economically disadvantaged, the illiterate etc. do not have access to or use computers. In fact, those most in need of fairness are those most susceptible to being

forced to pay a price – a higher price -- because this channel (if allowed to offer preferred pricing) is not available to them.

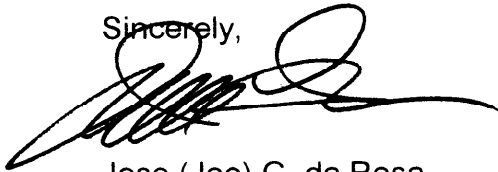
2. Despite the growth of the internet, the Sabre study you quoted points out that even in 2005, travel agencies will account for 65 percent of all airline bookings (both traditional and internet).
 3. There is a reason for the agents handling the greater share of airline sales: The GAO found, as you point out, that consumers are more likely to obtain the lowest available fare from a travel agent than from other sources of airline information. And there is a reason for this, too: Travel agencies are in the business of building a base of repeat customers – and that requires looking after the best interests of those customers. This enlightened self interest converges almost as if by design to promote the Department's goals.
- b. While the Department has provided an excellent historical analysis of CRS/airline practices and is taking great care to look closely at present industry practices before making its rulings, I believe it is the duty of the Department to look to the future and the probable evolution of practices within the industry as a result of any rulings it now makes.

The airlines' desire to offer over their own internet sites fares that they do not make available to the general public through the CRS's (and by extension, travel agencies, corporate travelers and others) is simply another manifestation of the practice endemic to the airline industry: "divide and conquer!"

Airlines complain that travel agency bookings cost them more than those they get directly over their own websites. In fact, airlines pay travel agencies more because they choose to pay more – they have all the control. While it seems clear that consumers get more value from travel agencies interested in their (the consumer's) welfare and their continuation as a customer, airlines have made the point that they should not pay for these services. For example, they have made it clear that they see no benefit in a travel agency shopping among other airlines to find a lower fare for the agency's customer than the fare on their own airline. OK, so as a result of this airline thinking, they cut commissions – over and over and over again. They are in control of how much they pay agents for distribution. If they want to pay less, they have shown us that they have the power to do this at will. Agents for their part have learned (after a lot of pain and loss) to charge consumers reasonably for their services – and consumers are willing to pay reasonably for those services. Why then would the airlines want to offer fares over their own internet sites and not make them available through the CRS's? Clearly, it is to undermine the agency distribution system because they would like to eliminate the impartial party working for the benefit of the consumer! This is a reality that I believe the Department must take into account in looking to the future and achieving its goals of promoting wide access by the public to complete, accurate and fair information and avoiding consumer deception.

Airlines have tremendous power, particularly the large airlines. This power when set to work in a competitive environment produces great public good. The Department now and the Board before it have guided and restrained that power when and as necessary to assure that the power is not used for anti-competitive benefit or to the detriment of consumers. This is the power of the Department, and it needs to be used at this time to formulate rules that assure a truly competitive marketplace that best serves the consumer. I believe the arguments above are cogent to these purposes and ask that they be taken into account in the proposed rule making.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joe da Rosa', with a stylized flourish extending to the left.

Jose (Joe) G. da Rosa
Chairman & CEO

/JdR

P.S. My congratulations to the person who wrote the Department's memorandum

[Federal Register: July 24, 2000 (Volume 65, Number 142)]
14 CFR Part 255
[Dockets Nos. OST-97-2881, OST-97-3014, and OST-98-4775]
Computer Reservations System (CRS) Regulations
[Proposed Rules]
[Page 45551-45558]

This was a wonderful, clear, thoughtful piece of writing, thankfully devoid of bureaucratese. It is an excellent exposition and useful to anyone interested in this important subject.